

REMARKS

Claims 1 through 20 are currently pending in the application.

This amendment is in response to the Office Action of December 24, 2003.

Information Disclosure Statement(s)

Applicants note the filing of two Information Disclosure Statement on August 8, 2003 and September 15, 2003 and note that copies of the PTO-1449s were not returned with the outstanding Office Action. Applicants respectfully request that the information cited on the PTO-1449 be made of record herein.

35 U.S.C. § 101 Double Patenting Rejection

Claims 1 through 20 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 21 through 40 of prior U.S. Patent 6,291,340 (hereinafter referred to as the '340 patent). Applicants respectfully traverse this rejection, as hereinafter set forth.

Applicants assert that at reliable test for statutory double patenting under 35 U.S.C. § 101 is whether a claim in the application can be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicants assert that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiments of the invention set forth in presently amended independent claims 1 and 11 of the present application and corresponding claims 21 and 31 of the '340 patent because different embodiments of the inventions are being claimed therein respectively. For instance, the embodiments of the inventions set forth in independent claims 1 and 11 of the present application each have an element of the invention calling for "depositing an amorphous titanium carbonitride film having substantially no crystalline titanium nitride therein on the sidewall of the contact opening and over the titanium metal layer using a carrier gas having a precursor compound" whereas corresponding independent claims 21 and 31 of the '340 patent do not. Accordingly,

different embodiments of the inventions are being claimed between the embodiments of the invention set forth in presently amended independent claims 1 and 11 of the present application and corresponding claims 21 and 31 of the '340 patent so that statutory double patenting under 35 U.S.C. § 101 does not exist. Therefore, presently amended independent claims 1 and 11 of the present application as well as the dependent claims therefrom are allowable.

Applicants request the allowance of claims 1 through 20 and the case passed for issue.

Respectfully submitted,



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